



July 17, 2000

Ms. Meredith Ladd
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2000-2670

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137492.

The College Station Police Department (the "department") received a written request for the following categories of information:

- 1) Any and all sworn complaints filed by private citizens or other officers against [a named police officer];
- 2) Any and all names of persons interviewed in the course of investigating said complaints;
- 3) Any and all written responses of [the officer] to such complaints;
- 4) Any and all final determinations regarding such complaints, including but not limited to, any reductions in pay or demotions in rank;
- 5) Any and all letters advising of any disciplinary action related to said complaints;
- 6) [The officer's] law enforcement background; and
- 7) The current salary of [the officer].

You state that the department does not possess any documents responsive to item 6.¹ You further state that the department has released to the requestor information responsive to item 7,

¹Consequently, the department need not comply with this aspect of the request. *See* Open Records Decision No. 445 (1986) (governmental body not required to obtain information not in its possession or to prepare new information in response to request).

as well as some of the documents that are responsive to items 1 -5, which you inform us pertain to a single internal affairs investigation. You contend that the voluntary witness statements pertaining to that IAD investigation are excepted from public disclosure pursuant to sections 552.108(a)(2) and 552.108(b)(2) of the Government Code.

Section 552.108(a) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . .” Section 552.108(b) excepts from public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution” Both sections 552.108(a)(2) and 552.108(b)(2) apply only to “an investigation that *did not* result in conviction or deferred adjudication.” (Emphasis added.) In other words, these sections apply only where the related law enforcement action has come to a conclusion that *did not* result in a conviction or deferred adjudication. Because you inform us that the internal affairs investigation relates to a criminal prosecution that is currently pending, we conclude that both sections 552.108(a)(2) and 552.108(b)(2) are inapplicable in this instance. Consequently, the department may not withhold any information from the requestor pursuant to section 552.108 of the Government Code.

You also contend that portions of the information at issue, including portions of those documents previously released to the requestor, are excepted from public disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) requires the department to withhold all information that relates to the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12, Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We agree that the department must withhold the types of information protected under section 552.117(2), and have marked the documents before us accordingly.

We also note that some of the records at issue contain individuals’ driver’s license numbers. Section 552.130(a)(1) of the Government Code requires that the department withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the department must withhold all driver’s license numbers appearing in the records at issue.

To summarize, the department must withhold all peace officers’ home addresses, home telephone numbers, and social security numbers pursuant to section 552.117(2). All driver’s license numbers found in the records at issue must be withheld pursuant to section 552.130(a)(1). The remaining requested information must be released to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/RWP/ljp

Ref: ID# 137492

Encl. Submitted documents

cc: Mr. Travis B. Bryan, III
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(w/o enclosures)